List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Pequot Lakes, Channel 261A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–7945 Filed 4–4–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 552, 554, 573, 576, and 577

[Docket No. 93–68; Notice 2]

RIN 2127–AD83

Petitions for Rulemaking, Defect and Noncompliance Orders; Standards Enforcement and Defect Investigations; Defect and Noncompliance Reports; Record Retention; and Defect and Noncompliance Notification

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is amending several provisions of its regulations that pertain to its enforcement of the provisions of Chapter 301 of Title 49 of the United States Code (49 U.S.C. 30101–169, formerly the National Traffic and Motor Vehicle Safety Act), with respect to manufacturers' obligations to provide notification and remedy without charge to owners of motor vehicles or items of motor vehicle equipment that have been determined not to comply with a Federal motor vehicle safety standard or to contain a defect related to motor vehicle safety.

Some of the rules published today implement provisions added by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), regarding requirements for notification of certain vehicle lessees and for a second notification to owners of recalled vehicles and items of motor vehicle equipment in the event that NHTSA determines that the original notification has not resulted in an adequate number of vehicles or items of equipment being returned for remedy.

This rule also amends the regulation governing NHTSA's consideration of petitions for rulemaking or for an investigation of an alleged safety-related defect or a noncompliance with a Federal motor vehicle safety standard (49 CFR part 552) and NHTSA's procedures following an initial determination that a safety-related defect exists. 49 CFR part 554. The rule also makes several changes in the regulations governing the form and content of defect and noncompliance reports submitted to NHTSA by manufacturers (49 CFR part 573); and to the agency's record retention requirements. 49 CFR part 576. Finally, this rule amends various sections of 49 CFR part 577 regarding the requirements for notification to owners, purchasers, dealers and lessees of safety-related defects and noncompliances.

DATES: *Effective date:* The amendments made in this rule are effective May 5, 1995.

Any petitions for reconsideration must be received by NHTSA no later than May 5, 1995.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Jonathan D. White, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, room 5319, Washington, DC 20590; (202) 366–5227.

SUPPLEMENTARY INFORMATION: These amendments are being adopted by NHTSA after considering comments received from numerous sources in response to a Notice of Proposed Rulemaking (NPRM) published on September 27, 1993. 58 FR 50314. NHTSA received comments on some or all of the proposed amendments from the following: ABAS Marketing, Inc. (Strait Stop); American Honda Motor Company (Honda); American Automobile Manufacturers Association (AAMA); Association of International Automobile Manufacturers (AIAM); Advocates for Highway and Auto Safety (Advocates); AM General Corporation (AM General); Blue Bird Body Company (Blue Bird); CIMS; Center for Auto Safety (CAS); Fleetwood Enterprises, Inc. (Fleetwood); The Kelly-Springfield Tire Company (Kelly-Springfield); Motor and Equipment Manufacturers' Association (MEMA); Mack Trucks, Inc. (Mack); Midland-Grau Heavy Duty Systems, Inc. (a subsidiary of Echlin, Inc.) (Midland); Navistar International Transportation Corporation (Navistar); National Automobile Dealers Association (NADA); R.L. Polk & Company (Polk); Sierra Products, Inc. (Sierra); Truck Manufacturers; Toyota Motor Corporate Services of North America (Toyota); and Volkswagen of America, Inc (Volkswagen). The reasons for the proposals were fully discussed in the NPRM.

Not all of the amendments proposed in the NPRM are being adopted as final rules today. With respect to the proposed amendment of 49 CFR part 577 regarding the duty of manufacturers to notify dealers of defects and noncompliances that are determined to exist, discussed in the NPRM (see 58 FR at 50320), NHTSA has decided that it needs additional time to consider the appropriate action to take in light of the issues raised by some of the commenters. Since these issues do not affect the remaining proposed amendments, the agency has decided to issue a final rule with respect to those amendments while it resolves the issues relating to dealer notification.

The regulatory provisions amended by this final rule implement the National Traffic and Motor Vehicle Safety Act of 1966, as amended (''Act''), which was originally set out at 15 U.S.C. 1381 *et seq.* Recently, as part of a comprehensive codification of transportation laws, the Act was reenacted as Chapter 301 of Title 49 of the United States Code. Pub.L. 103–272 (July 5, 1994). Congress specified in section 6(a) of the statute that the codification is not to be construed as making any substantive changes, but changed the wording of almost every section. Some of these changes affect the wording of sections of NHTSA's regulations that are being amended in this final rule. The agency believes it is desirable that the language of its regulations be consistent with that used in the statute. Therefore, this rule also makes technical amendments to the regulations covered by this notice to make their wording conform to the language used in the recodification. Any such amendments will be noted in the appropriate section of the preamble. The agency emphasizes that, because

Congress did not intend the changes in terminology to be substantive, these amendments are technical only and do not alter the meaning of the regulations.

Amendments to Part 552—Petitions for Rulemaking and for Defect and Noncompliance Investigations

Part 552 implements the citizen petition provisions of 49 U.S.C. 30162 (formerly section 124 of the Act). This rule adopts the proposed amendments to 49 CFR 552.6 and 552.8 in order to remove any possible ambiguity with regard to the factors that NHTSA may consider when deciding whether to grant or deny a citizen petition. The new language of § 552.8 makes it clear that the regulation does not limit NHTSA's discretion to consider factors such as resource allocation, agency priorities, and likelihood of success in litigation which might arise from the order, when deciding whether to grant or deny petitions filed pursuant to the Act. The amendment also deletes the reference in § 552.6 to a determination by the Associate Administrator that there is a ''reasonable possibility'' that the requested order will be issued.

While the amended regulation lists some specific factors that the agency may consider in deciding whether to grant or deny the petition, the listing is not intended to be exhaustive. It does not preclude the agency from considering factors not listed. The rule does not require the agency to consider all factors listed, nor does it set an order of priority in which the factors must be considered.

Two commenters, CAS and Advocates, expressed the view that the proposed amendment is too broad or vague, that it should specify safety as the first factor that NHTSA should consider, and that it should list certain other specific factors that the agency must consider. While safety is certainly one factor that the agency will consider, these commenters fail to recognize that the regulation is intended to be consistent with the broad discretion given to NHTSA by the Act to grant or deny petitions. The United States Court of Appeals for the District of Columbia Circuit recognized the breadth of the discretion conferred by the Act in *Center for Auto Safety* v. *Dole*, 846 F.2d 1532 (D.C. Cir. 1988), *on rehearing, vacating* 828 F.2d 799 (1987). In that case, the court specifically rejected an argument by CAS that NHTSA could not consider factors other than safety in deciding whether to grant or deny a petition for a safety-related defect or noncompliance proceeding.

Amendments to Part 554—Safety Defect and Standards Noncompliance Decisions

NHTSA is also amending 49 CFR 554.10 and 554.11, which implement the provisions of the Act governing initial and final decisions of safety-related defect or noncompliance by the Secretary. 49 U.S.C. 30118(a) and (b) (formerly section 152 of the Act). Section 554.10 is amended by deleting subsection (e) in its entirety; and § 554.11 is amended by deleting subsection (c), which provides that if the Administrator decides that a failure to comply or a safety-related defect ''does not exist,'' he or she will notify the manufacturer and publish ''this finding'' in the **Federal Register**.

As stated in the NPRM, the Act does not require a decision by NHTSA that a failure to comply or a safety-related defect does not exist. And, as a practical matter, the Administrator rarely if ever makes an affirmative decision that there is no failure to comply or no safety-related defect. Rather, if the Administrator believes that the information at his or her disposal does not warrant a final decision of defect or noncompliance, the investigation is closed, subject to its possible reopening if additional evidence is obtained.

To minimize the possibility that the public might be subject to confusing assertions by manufacturers that there has been a decision that a safety-related defect or noncompliance does not exist, the agency has decided to adopt the amendments proposed in the NPRM. The amended section will provide that if the Administrator elects, following an initial decision under 49 U.S.C. 30118(a), to close an investigation without making a final decision that a failure to comply or a safety-related defect exists, he or she will notify the manufacturer and will publish a notice of that closing in the **Federal Register**.

Honda commented that the regulation should give the agency the option of finding that a defect or noncompliance does not exist when it closes an investigation. Its rationale is that in the absence of such a decision, the public would be left in doubt about whether a vehicle did or did not have the defect or noncompliance. The agency has no reason to believe that the absence of such decisions in the past has been a source of confusion for the public. It sees no significant safety benefit to be gained from making such decisions; and continuing an investigation until proof of such a negative could be obtained would divert scarce resources from other areas.

NHTSA also will delete § 554.10(e), which provides that if the Administrator determines that a failure to comply or a safety-related defect ''does not exist,'' he or she may, at his/her discretion, within 60 days invite interested persons to submit views on the investigation at a public meeting as superfluous. The agency has never held a public meeting following the closing of an investigation. However, if it should so choose, it may do so even in the absence of such a regulation. No commenter objected to this change.

Amendments to Part 573—Defect and Noncompliance Reports

NHTSA is amending several sections of 49 CFR part 573 regarding leased vehicles; the timing and duration of remedy campaigns; submission of draft owner notification letters to the agency; advance submission of schedules for notification and availability of remedy under certain circumstances; quarterly reports on the progress of recall campaigns; identification by vehicle manufacturers of suppliers of defective or noncompliant equipment; identification by equipment manufacturers of vehicle manufacturers that have been supplied with defective or noncompliant equipment; and requirements for submission of information regarding the scope of a recall campaign in certain instances.

Definitions

NHTSA is amending § 573.4, ''Definitions,'' to include definitions of the terms ''leased motor vehicle,'' ''lessor,'' and ''lessee,'' because those terms are not currently defined in part 573. (These definitions will also be added to part 577.) The definition of ''leased motor vehicle'' is identical to that which appears in 49 U.S.C. 30119(f)(1). The definitions of ''lessor'' and ''lessee'' in this amendment are consistent with the definition of ''leased motor vehicle.''

Under the definitions proposed in the NPRM, only lessors that leased five or more vehicles for a term of at least four months in the year preceding the date of the notification would be covered by these regulatory provisions. One commenter, NADA, suggested that the definition of ''lessor'' be changed to make clear that the lessor is the owner, as reflected on the vehicle's title, of any five or more leased vehicles, as of the date of notification by the manufacturer of the recall.

NHTSA believes that NADA's comment provides a useful clarification of the term ''lessor,'' by adding the lessor is the owner as shown on the vehicle's title. It is also reasonable to

limit the term ''lessor'' to those who have ownership at the time of the notification by the manufacturer of the recall, so that the obligations of lessors would not be imposed on those who no longer owned the recalled vehicle at that time.

NHTSA is also adopting an amendment to § 573.4 which defines the term ''readable form,'' to mean a form that is either readable by the unassisted eye or by machine. As proposed, the definition required parties submitting information in machine readable form to obtain prior written approval from NHTSA's Office of Defects Investigation, confirming that equipment needed to read the information is readily available to NHTSA. Toyota commented that for all similar information responses, once a manufacturer has obtained approval for the original response in that form, it should not have to obtain approval for future submissions in the same form. NHTSA believes that one-time approval of a machine-readable format should suffice to ensure that the agency receives information in a form which makes it accessible to it. Requiring approval each time information is submitted would be duplicative and would unnecessarily reduce the efficiency of the recall notification process. Accordingly, the rule adopted today incorporates the changes suggested by Toyota.

NHTSA does not believe a system that permitted oral approval, as suggested by AAMA, would be workable. In the event that a question arose about the agency's approval of a particular format, it would be desirable to have a written record showing the scope of the approval.

Scope of Recall

The agency is amending 49 CFR 573.5(c)(2) to require, as part of the manufacturer's report to NHTSA of its defect or noncompliance decision, an explicit statement of how the population that will be covered by the recall was identified and of how the recall population differs from any similar vehicles or items of equipment that are not covered by the recall. If the information is not available to the manufacturer at the time of filing its part 573 report, it must so state in that report and furnish an estimated date when it expects it to be available. When there is such a delay, the manufacturer must furnish the information to NHTSA within five Federal government working days of when it becomes available.

Manufacturers often decide that a safety-related defect or noncompliance exists in only some portion of their production of a given model or item of equipment; for example, in vehicles or items of equipment manufactured between certain dates, or in certain locations, or with certain engines or options. On several occasions within the past few years, manufacturers have had to revise the scope of their recalls after they or NHTSA uncovered information indicating that additional vehicles or equipment items contained the defect or noncompliance.

Although some manufacturers have included information in their part 573 reports that explains the basis on which they selected the specific vehicles or equipment items that will be covered by a recall, NHTSA's current regulations do not explicitly require manufacturers to do so. NHTSA has found that when this information is not provided, it has been difficult to ascertain whether the scope of the recall proposed by the manufacturer is adequate. The amendment will ensure that the agency has the information it needs to ensure that the recall scope proposed by the manufacturer is correct.

AAMA and Blue Bird opposed the amendment on the ground that the agency already has the authority to request this information in individual cases as needed. AAMA also commented that requiring it in all cases will be unduly burdensome, and that NHTSA does not need this information for every recall. These were the only comments on this proposal.

The fact that NHTSA has authority to ask for this information in individual cases is not a reason for not requiring it across the board. Requiring it by regulation will make NHTSA's oversight of the recall process more efficient, because it will eliminate the need for the agency to decide in each case whether to ask for the information. Moreover, it will ensure that the information is available even in those instances in which NHTSA might fail to request the information because the need for it is not apparent at the time the manufacturer submits its defect or noncompliance report.

NHTSA does not believe it is unduly burdensome to require this information, which will ordinarily be readily available to the manufacturer at the time it files its part 573 report. In making a defect or noncompliance decision, the manufacturer is likely to have identified the particular vehicles or items of equipment covered by the recall, and it will, of necessity, have a basis for that identification. The amendment does permit later filing when a manufacturer does not have the information at the time the report is submitted.

NHTSA also disagrees with AAMA's contention that the agency does not ''need'' the information in every recall. Whenever the manufacturer is recalling fewer than all similar vehicles or items of equipment, the agency needs to know why the scope of the recall is limited in order to ensure that the recall campaign adequately covers the population affected by the defect or noncompliance. In the past, there have been instances in which a manufacturer expanded the scope of a recall after NHTSA obtained information showing that other vehicles or items of equipment had the same defect or noncompliance. The delay in the agency's learning about the additional defective or noncomplying vehicles or equipment items exposed members of the public to a safety risk that could have been avoided had the information explaining the scope of the recall been available to NHTSA when the manufacturer first notified NHTSA of its decision to recall.

Identification of Suppliers and Customers

NHTSA is amending § 573.5(c)(2) to require the manufacturer of a recalled vehicle or item of equipment to identify the supplier (if different from the vehicle manufacturer) of any component or assembly that contains the defect or noncompliance, and to require an equipment manufacturer that decides that a defect or non-compliance exists in its product to identify all manufacturers that purchased the defective or non-complying components for use in new motor vehicles or new items of equipment.

Both of these requirements will assist the agency in assuring at an early point in the recall process that a recall encompasses all vehicles and items of equipment that contain defective or noncomplying components rather than being inappropriately limited to a single manufacturer's production. Identification of the supplier will, at the outset of the campaign, permit the agency to contact the supplier promptly to ascertain whether the same component was distributed to other manufacturers or as replacement equipment. Likewise, early identification of the supplier's other customers (if any) will permit the agency to contact the affected manufacturers sooner to apprise them of their responsibilities under the Act once a defect or noncompliance in an item of equipment has been identified.

AAMA, AM General and Blue Bird expressed views about this proposal. AAMA and Blue Bird contended that such a requirement would be unduly burdensome for manufacturers. The agency disagrees. In many instances, manufacturers already provide this information to NHTSA when they are

conducting a recall. Moreover, in most if not all recalls, the manufacturer will know the particular component or components that caused the defect or noncompliance in the completed product, and will certainly be aware of the identity of the entity that supplied the component. If the manufacturer believes that the defect or noncompliance is not caused by a component or assembly from an outside supplier, it need not provide any information in response to this provision. Moreover, any burden is far outweighed by the safety benefit of allowing the agency to identify other vehicles or items of equipment with the same defective or noncompliant component.

Both Blue Bird and AAMA also noted that the agency already has the authority to request this information in individual recalls. While this statement is correct, it is not a reason for not adopting this provision. The information required by the amendment is obviously more accessible to the manufacturer than to the agency; the agency may not be able to identify all cases in which it is appropriate to request such information. Moreover, the amendment ensures that this type of information will be available to NHTSA at the beginning of the recall process. This will have the safety benefit of permitting earlier identification of other vehicles or items of equipment with the same defect or noncompliance, which will minimize the length of time that the public is exposed to a safety risk because it avoids unnecessary delay in making the remedy available to all affected owners.

Section 30102(b)(1) of Title 49 does not, as AAMA argues, prohibit the agency from requiring manufacturers to provide this information for components that are not replacement equipment as defined by that section. That section merely states that the vehicle manufacturer, and not the component manufacturer, is responsible for remedying a defect or noncompliance in a component installed in a vehicle as original equipment. It does not preclude NHTSA from obtaining information about the identity of the manufacturer or supplier of components used as original equipment. The agency does not intend to use the information to hold the component manufacturer responsible for remedying the defect or noncompliance. Its purpose is to learn from the latter whether any other vehicle manufacturer used the same component in its vehicles, so that the agency can then contact the manufacturer of those vehicles to ascertain whether additional recalls should be conducted.

AM General expressed a concern that this provision could have an adverse effect on suppliers whose components are identified by manufacturers as defective, in instances where further examination reveals that they are not in fact the cause of the defect or noncompliance. The number of instances in which such incorrect identification occurs is likely to be quite small because, in most instances, the cause of the problem has already been identified by the time the manufacturer makes its decision that there is a safety-related defect or noncompliance. If a manufacturer is still uncertain as to whether a defect or noncompliance is attributable to a component or assembly from an outside supplier when it files its defect or noncompliance report with NHTSA, the manufacturer's report should make that uncertainty clear. Any adverse publicity that does erroneously affect a supplier can be countered by publicizing the correct information when it becomes available. Finally, the safety benefit of having this information available to NHTSA, as described above, will far outweigh the risk that, in a few instances, a supplier might be incorrectly identified as the origin of a defective or noncomplying product.

Schedule for Notification Campaigns

Although many recalls are implemented within a reasonable time of the decision that a safety-related defect or noncompliance exists, NHTSA has noted an increase in the number of recalls in which there has been a significant delay between the manufacturer's decision that a defect or noncompliance exists and the commencement of the manufacturer's recall campaign. There have also been a limited number of instances in which the duration of the campaign was inordinately extended. The manufacturers in question have generally sought to justify these delays and extensions on the basis that needed parts and/or facilities were not available and it would therefore be pointless to notify owners of the defect or noncompliance.

While such unavailability may in certain cases justify some delay, it is important that the agency be aware of the manufacturer's anticipated schedule at the earliest possible time in order to assure that notification campaigns under the Act are commenced in a timely fashion and completed within an appropriate time period. In addition, in some instances, even if implementation of the remedy must be deferred (e.g., because needed parts are not available), it is appropriate for the manufacturer to send an interim notification to advise consumers of actions they should take prior to repairs being made. Finally, the agency needs to be able to respond to questions about the timing of the recall from the public and/or the media.

Therefore, NHTSA proposed to amend 49 CFR 573.5(c)(8) to require manufacturers to provide information about their schedule for owner notification, along with a description of any factors that they anticipated could interfere with the schedule. Under the proposal, schedules would have been required for all recalls. In addition, the NPRM proposed that if a manufacturer planned to begin the campaign more than 30 days after its defect or noncompliance decision, or planned to spread the notification campaign over more than 45 days, the manufacturer would have to identify the basis for such a delay. In addition, the NPRM proposed that if a manufacturer were unable to follow the schedule it had originally submitted, it would have to inform NHTSA promptly and submit a revised schedule.

AAMA opposed the proposal on several grounds: that it would make NHTSA a participant in, rather than an observer of, the recall process; that it would use manufacturer resources that would otherwise be devoted to implementing the recall campaign; that it is unneeded because most recall campaigns are implemented within a reasonable time; and that the requirement for a schedule would not speed up the remedy of vehicles because manufacturers would still need time to design and test parts, design and test the remedy, and train personnel.

NHTSA, as the agency charged by Congress with enforcement of the notification and remedy provisions of the Act, is of necessity a ''participant'' in the recall process. An integral part of this responsibility is to ensure that manufacturers carry out their recall obligations in a reasonable manner, which includes avoiding undue delay in sending owners notification of the defect or noncompliance.

The agency does not believe that the requirement will divert resources that would otherwise be used in the campaign; or that it will cause a delay in the implementation of recall campaigns, as Blue Bird commented. A manufacturer that determines that a recall is necessary will necessarily have to develop a schedule for implementing the recall. The proposal and the rule as adopted simply require that, for those relatively rare recalls for which a delay is anticipated, the schedule, along with

an explanation thereof, be provided to NHTSA.

AIAM opposed the proposal because it did not believe that manufacturers should be required to explain normal design, production, and distribution delays. It argued that only unique delays in a particular recall campaign, or delays of more than 75 or 90 days in sending out notification, should have to be explained. Moreover, it noted that foreign-based manufacturers need more than 30 days to initiate notification and begin the remedy because of the need to be in contact with their headquarters, and that it often takes more than 30 days to get an updated owner list from R. L. Polk.

The purpose of this provision is to ensure that the recall campaign is initiated within a reasonable time after the defect or noncompliance determination. NHTSA is not concerned with whether the delay is due to ordinary or unique circumstances. Its interest is in whether it is *reasonable.* The information the amendment requires is intended to enable NHTSA to evaluate the reasonableness of the delay, and to provide for interim notification where appropriate.

NHTSA believes that most notification campaigns can be commenced within 30 days of a manufacturer's defect or noncompliance decision and completed within 45 after they are commenced. However, to eliminate any ambiguity in calculating time periods, and to provide manufacturers with slightly more time, NHTSA has revised the final rule so that the periods in question are calculated from the date of the notice to the agency of the defect or noncompliance decision.

Based on past experience, and given the availability of telefax and other rapid electronic means of communication, that time period should be sufficient to allow manufacturers to obtain the information they need, either from Polk or from parent companies or suppliers located overseas. Moreover, if more time is required, the manufacturer need only advise the agency and explain the basis for the delay. NHTSA will not disapprove reasonable schedules for recall campaigns.

Advocates supported the requirement for a schedule, but also suggested that manufacturers be required to notify all owners within 30 days of notifying NHTSA of the defect or noncompliance. Advocates explained that any delays in the availability of the remedy could be explained to owners in the notification letter. NHTSA believes that a 30-day requirement for notification under all circumstances is unnecessarily rigid. It prefers to have the flexibility to decide on a case-by-case basis whether a proposed schedule is unreasonable.

AM General opposed the proposal because it believed that the manufacturer would be bound by the schedule, which would limit its flexibility in conducting the recall campaign. It also expressed concern that NHTSA needed to define more clearly the circumstances under which it would take action against a manufacturer under this section and what the action would be. Finally, it commented that NHTSA normally is able to learn of problems with recall campaigns through its regular interaction with manufacturers, and that the agency already has sufficient means at its disposal to compel a manufacturer to act more quickly.

Contrary to AM General's contention, the amendment does not unreasonably limit manufacturer flexibility. The amendment clearly states that if unexpected circumstances arise, that would result in unanticipated delay, the manufacturer may submit a revised schedule. If there are valid reasons for the delay, there would be no agency action against the manufacturer.

Honda commented that a definition of the term ''campaign'' is needed, to clarify whether it means notification to owners or the availability of the remedy. The agency has revised the regulatory language to clarify that the time periods triggering the need to submit a schedule refer to owner notification. However, NHTSA has also added language to clarify that if the remedy will not be available at the time owners are notified of the defect or noncompliance, the manufacturer's report must state when the remedy will be provided. This requirement makes explicit what was already implicit in existing § 573.5(c)(8) (redesignated by this amendment as § 573.5(c)(8)(i)), which requires each manufacturer to include in its report ''a description of its program for *remedying* the defect or noncompliance.'' (Emphasis added.)

Based on its consideration of the comments received on the NPRM, and on its experience in monitoring manufacturer compliance with the notification and remedy requirements of the Act, NHTSA now believes that it is not appropriate to require manufacturers to submit the detailed scheduling information such as that proposed in the NPRM for *every* recall campaign. Instead, the agency believes it is appropriate to focus on recalls in which the manufacturer intends to delay commencement or completion of the notification campaign to assure that such delays are not unreasonable.

For recalls in which the manufacturer intends to commence owner notification within 30 days, and to complete the notification campaign within 75 days of notifying NHTSA, it is unlikely that the agency would find that the schedule was unreasonable or would create a significant safety problem. Accordingly, the detailed scheduling information proposed in the NPRM will not be required for those recalls. (Of course, NHTSA has the authority to require manufacturers to provide scheduling and related information on a case-by-case basis, even apart from these general regulatory requirements.)

In those cases where the manufacturer intends to exceed the time periods set out in the amended final rule, there is a greater likelihood that the remedy will not be available within a reasonable time, as required by 49 U.S.C. 30120(c). Therefore, the amendment adopted today retains the requirement proposed in the NPRM for filing a schedule for the campaign and a detailed description of the factors on which the proposed schedule is based in such instances. Such factors will often include the time frame for development and testing of the specific remedy for the defect or noncompliance, the time frame for production of any necessary parts, and the anticipated date(s) for distribution of those parts to dealers and/or owners.

The final rule also retains the requirement that if a manufacturer becomes aware that circumstances will delay implementation of the recall, it must promptly inform NHTSA of the reasons for the delay and submit a new schedule. Such submission must also contain the basis for the new schedule, which shall also be subject to disapproval by the Administrator.

The preamble to the NPRM noted that a manufacturer that intended to seek an exemption from the recall requirements of the Act pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556 on the basis that the defect or noncompliance was ''inconsequential as it relates to motor vehicle safety'' would have to advise the agency of its intention to do so in its initial report under part 573. In its comments, AIAM suggested that the schedule requirement be waived when a manufacturer intends to file an inconsequentiality petition.

The agency agrees that it would not be appropriate to require a manufacturer that intends to petition for inconsequentiality to file a schedule at the time it notifies the agency of a defect or noncompliance, since no recall will take place if the petition is granted. However, this does not mean that the schedule requirement should be completely waived in such

circumstances, since if the petition is denied, the manufacturer will have to conduct a recall within a reasonable time thereafter. Therefore, NHTSA has added a new § 573.5(c)(8)(v) to clarify that the time periods for filing a schedule for owner notification shall run from the date of the agency's denial of the petition, whether or not the manufacturer appeals that denial pursuant to 49 CFR 556.7.

The final rule also adds a new § 573.5(c)(8)(vi) to require that in the event a manufacturer that had informed NHTSA in its part 573 report that it intended to file a petition for an inconsequentiality exemption does not do so within the 30-day period established by 49 CFR 556.4(c), the time frame for filing a schedule specified in § 573.5(c)(8)(ii) would begin to run from the end of that 30-day period. If NHTSA finds that manufacturers are abusing this provision in order to avoid filing the required schedules, it will take appropriate action.

Submission of Proposed Owner Letters to the Agency

NHTSA is also amending 49 CFR 573.5(c) to add a requirement that manufacturers submit to the agency for review, copies of their proposed owner notification letters before, rather than after, the letter is sent to owners. (In the NPRM, this proposed amendment was added to paragraph (9) of § 573.5(c). However, for the sake of clarity the agency has decided that this requirement should be in a separate paragraph. Accordingly, in the final rule, the requirement for submission of proposed owner letters will be paragraph (10) of § 573.5(c). The paragraph on recall campaign numbers, designated as (10) in the NPRM will now be paragraph (11).) The final rule provides that the manufacturer must submit a proposed owner notification letter to the Office of Defects Investigation (ODI) at least five Federal government business days prior to the date it intends to begin mailing. As noted in the NPRM, the purpose of this requirement is to allow NHTSA to review a manufacturer's draft to ascertain whether it complies with all statutory and regulatory requirements before mailing, since sending a corrected letter *after* the first mailing causes unnecessary expense and could confuse owners.

AAMA asserted that NHTSA lacks the statutory authority to ''dictate, edit or approve in advance'' a manufacturer's notification to owners. The amendment does not purport to grant to the agency any authority to ''dictate'' the precise wording of owner notification letters. While NHTSA has the authority pursuant to 49 U.S.C. 30118(e) (formerly section 156 of the Act) to order manufacturers to take specified steps if it decides that they have not adequately carried out their notification responsibilities, this amendment is part of a more informal process. NHTSA's experience has been that when it identifies deficiencies in a proposed owner notification letter, most manufacturers are willing to make appropriate changes. In any event, the fact that the agency may not be able to compel a manufacturer legally to modify an owner notification letter at that stage does not mean that the agency cannot or should not take steps to try to convince manufacturers to make appropriate changes in an effort to maximize the response to recall campaigns.

AAMA's fear that the regulation will lead to NHTSA's ''micromanaging'' the form and content of letters simply is not warranted. The agency has neither the time nor the interest to get involved in the minute details of rewriting owner notification letters that meet statutory and regulatory requirements. The extent of its involvement will be to ensure to the maximum possible extent that those letters meet all such requirements.

Several commenters expressed concern that requiring such advance review could unduly delay the recall notification process. Some also suggested that the agency add a provision permitting a manufacturer to send the letter if it has not heard from NHTSA within a specified time. As noted above, this amendment does not provide NHTSA with the authority to force a manufacturer to delay its owner notification campaign until the agency approves the wording of the manufacturer's proposed owner letter. Thus, the amendment is unlikely to add any delay at all, since manufacturers almost always prepare drafts of owner notification letters well before the actual mailing begins. In any event, the amendment specifically authorizes the agency to waive this requirement where warranted by safety considerations or other appropriate factors.

Nevertheless, in order to ensure that the agency has adequate time to review the draft letter and contact the manufacturer to resolve any problems, the amendment requires the manufacturer to submit the proposed letter by a means which allows verification that the letter was received by ODI and indicates the date of receipt. The agency encourages manufacturers to send their draft notification letters to ODI by fax, at 202–366–7882 (primary) or 202–366–1767 (alternate). Other means that provide verification of receipt are overnight delivery (either by Express Mail or private delivery service) addressed to: Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5319, Washington, DC 20590; and hand delivery to ODI at that address. Neither first-class mail nor certified mail would be acceptable because of lengthier delivery times and/or the absence of proof of receipt.

Two commenters, AAMA and Truck Manufacturers, support the present system, which requires manufacturers to submit copies of owner notification letters to NHTSA only *after* mailing to owners. AM General suggested amending the proposal to require sending copies of owner notification letters to NHTSA on the same day they are mailed to owners. AAMA states that there is no need for the amendment because most letters already meet the requirements of part 577 and because many manufacturers currently send draft copies of owner notification letters to NHTSA in advance of mailing.

The fact that many manufacturers already seek out NHTSA's advance approval is not an argument against the amendment. To the contrary, it shows that it is practicable and desirable. Similarly, the fact that most owner letters comply with regulatory requirements does not provide a basis for not trying to assure that even more letters fully comply.

As pointed out in the NPRM, NHTSA has had several experiences in which an owner notification letter has failed to comply with all of the requirements of part 577. In such instances, it would rarely be productive (and might be confusing and counterproductive) to require the manufacturer to send a second, corrected letter. The amendment will also increase the agency's ability to respond to questions about the recall from the public and/or the media by ensuring that the agency is informed about the specifics of the notification letter before the manufacturer actually initiates the recall.

Finally, the agency views as neither necessary nor desirable Toyota's suggestion that NHTSA incorporate in its regulations a provision allowing it to waive requirements for owner notification letters in certain instances, such as negotiated settlements. NHTSA's broad discretion to enter into negotiated settlements of enforcement matters has already been recognized by the courts. *See Center for Auto Safety* v. *Lewis*, 685 F.2d 1381 (D.C. Cir. 1982). In any event, the amendment as proposed and adopted specifically allows the agency to waive this requirement.

Quarterly Reports

NHTSA is amending 49 CFR 573.6(a) to establish specific due dates for quarterly reports on the progress of ongoing recall campaigns. The NPRM proposed to amend this section by establishing due dates for quarterly reports on the twentieth calendar day after the close of each calendar quarter.

Most commenters favored the idea of amending this provision. The two that did not—Midland and Truck Manufacturers—favored maintaining the present system largely because the proposed schedule would not give enough time for some manufacturers (especially small companies that are not computerized) to submit their reports. AAMA favored amending the due dates, but also expressed the view that the dates in the proposal would not allow some companies enough time. Kelly-Springfield expressed the same view. The agency has decided to adopt the schedule suggested by AAMA, which sets definite calendar dates on which the reports would be due, but allows more time than the language proposed in the NPRM. Under the final rule, manufacturers must file their quarterly reports of recall campaign status no later than April 30 for the quarter ending March 31, July 30 for the quarter ending June 30, October 30 for the quarter ending September 30; and January 30 for the quarter ending December 31, unless the specified filing date falls on a weekend or Federal holiday. In such cases, the quarterly report would be due on the next day on which the Federal government is open for business.

NHTSA believes that this schedule allows a reasonable amount of time for all manufacturers, even those that are small and lack computer facilities. Since the date is always the same, i.e., the 30th of the given month, the agency believes it will be easier to keep track of than Kelly-Springfield's suggestion, which was the last business day of the month.

The NPRM also proposed to amend § 573.6(b) by adding a new paragraph (6) that would require both vehicle and equipment manufacturers to indicate separately in their quarterly reports the number of vehicles and items of equipment that are repaired and/or returned by dealers prior to their first sale to the public. AAMA, AM General, Blue Bird, and Truck Manufacturers opposed the proposal because of the added cost and time that would be needed to prepare the quarterly report. AAMA added that it saw no justification for such a requirement. No other commenter opposed the proposal, with Midland favoring it and Volkswagen taking a neutral position but giving information on the time and cost entailed in making the changes that would be needed to its computer system to track inventory return information separately.

After reviewing these comments, the agency has decided to make the requirement applicable only to equipment manufacturers, rather than to both vehicle and equipment manufacturers as proposed in the NPRM. Under 49 U.S.C. 30116, defective and noncompliant motor vehicles in dealer inventory must be, and usually are, repaired by the dealer prior to sale to the public; whereas that section requires the manufacturer of equipment to repurchase the defective or noncomplying items that are in inventory at the time of the defect or noncompliance decision. In addition, the agency believes that there is a greater need for the agency to keep track of whether defective or noncomplying equipment is being returned by dealers and retailers to manufacturers because of the greater number of items that are involved in equipment recalls, the higher percentage of items that are kept in the inventories of dealers and retailers at any given time, and the greater likelihood that dealer/retailer inventory will contain items subject to recall. In addition, the agency is clarifying that manufacturers should include in this category items returned prior to first sale to the public from all retailers, not just ''dealers,'' as well as from distributors of the items in question.

Recordkeeping for Leased Vehicles

NHTSA is amending 49 CFR 573.7 to require manufacturers to maintain information concerning notification of owners of leased vehicles if the manufacturer knows that a vehicle is leased, and to require lessors of leased vehicles to maintain certain information concerning notifications they send to the lessees of those vehicles. The final rule adds a provision that was not in the NPRM: that the records with respect to notification of lessees must be maintained for one calendar year following the expiration of the lease. The agency added this provision because it was necessary to make clear to lessors and manufacturers how long these records must be maintained. The other record retention requirements in part 573 specify a length of time for which the records must be kept.

In the NPRM, NHTSA proposed to amend § 573.7(a) to require the manufacturer to identify those vehicles on its list of owners/purchasers receiving notification which it knows to be leased. The proposal would not have required a separate list of those vehicles that were leased, but would have required that leased vehicles be clearly identified as such. The agency also proposed to add a new § 573.7(d), which would have required each lessor notifying its lessees of a defect or noncompliance to maintain a list of the names and address of the lessees, to include the name and address of the lessee, the VIN, and the date the lessor sent the notification to the lessee. Based on the comments received on that proposal, which are summarized below, the agency has decided to adopt a final rule which differs in some respects from the original proposal.

AAMA, NADA, Polk, Truck Manufacturers and Toyota opposed the proposal in the NPRM. AIAM supported the proposal with modifications. AAMA, Truck Manufacturers and Toyota based their opposition on the difficulty that manufacturers would have identifying which vehicles in a recall are leased, and the cost and burden of developing a system that would enable a manufacturer to keep track of this information. Polk's opposition was based on the difficulty of ascertaining from state vehicle registration records whether or not a vehicle is leased.

The agency notes that the proposal in the NPRM would have required manufacturers to maintain records of notifications sent to ''known lessors.'' This would not have required manufacturers to identify in its records leased vehicles other than those it already knew to be leased. However, because of the apparent misunderstanding of the extent of the manufacturer's obligation under the first proposal, NHTSA is implementing a revised and simplified version of this requirement, which is intended to make clear that the lists maintained by manufacturers under this section do not need to identify those vehicles that are leased except to the extent that the manufacturer already has that information at the time it sends the notification letter.

AAMA also noted that to assure that lessees receive notification of a recall, it would be necessary to include language in the notification letter directing lessors to notify lessees in all notification letters. Although the first NPRM did not propose such a requirement, the agency has decided, after considering comments on the proposed amendments to part 577 regarding notification of lessees, that the simplest and most effective way to ensure that lessees will be notified is to require manufacturers to include in all

notification letters sent to vehicle owners a statement that if the vehicle is leased, the lessor must send the notification letter (or a copy thereof) to the lessee. That amendment is discussed more fully elsewhere in this notice.

NADA opposed the proposal to require each lessor to maintain a list of the names and addresses of the lessees it has notified. NADA stated that if lessors are required to forward all recall notification letters to lessees, there is no need to require lessors to keep records of those lessees to which it sent the letters. It also commented that it would be unduly burdensome for small leasing companies to keep the ''detailed'' records that would be required by the proposal.

NHTSA notes that the obligation of lessors to keep records of all lessees who have been notified of a recall is analogous to the obligation of a manufacturer to keep records of those whom it has notified. It is, however, less complex because, unlike the manufacturer list, it does not need to be updated each quarter for status of the remedy, and requires only a one-time entry for the date on which the notification was sent to the lessee.

As stated in the NPRM, NHTSA has found the information maintained by manufacturers pursuant to § 573.7 to be useful in the agency's efforts to evaluate whether manufacturers' notification and remedy campaigns are adequate. Because Congress amended the Safety Act to require lessors to send recall notifications to lessees (see 49 U.S.C. 30119(f)), NHTSA needs the same type of information from lessors in order to evaluate whether lessors are adequately carrying out their obligations. While the agency recognizes that this recordkeeping may impose a burden on some lessors, that burden is outweighed by the safety benefit of having such information available.

Copies of Manufacturer Communications

NHTSA is also amending § 573.8 to clarify that the requirement that manufacturers furnish NHTSA with copies of ''all notices, bulletins and other communications * * * sent to more than one manufacturer, distributor, dealer, or purchaser, regarding any defect in his vehicles or items of equipment * * * whether or not such defect is safety-related,'' applies to communications made by electronic means. It is making the same amendment to § 573.5(c)(9), which requires manufacturers to send to NHTSA ''a representative copy of all notices, bulletins, and other communications that relate directly to the defect or noncompliance and are sent to more than one manufacturer, distributor, dealer or purchaser,'' within five days of sending them to the manufacturers, distributors, dealers or purchasers.

Only one commenter, AIAM, opposed this proposal. It stated that NHTSA lacks the authority under the Act to require this ''additional'' information from manufacturers. AIAM's objection is misplaced. The amendment does not increase the scope of the agency's existing authority to require manufacturers to submit certain types of information. It merely makes explicit a requirement that was already inherent in the regulations as previously written.

Recall Identification Numbers

In order to minimize confusion during NHTSA's monitoring of recall campaigns and to improve the agency's response to owners and prospective purchasers, NHTSA is adding a new provision to part 573 (§ 573.5(c)(11)), which requires manufacturers to provide the manufacturer's identification number for each recall if it is not identical to the campaign number assigned by the agency. In the NPRM, this amendment was designated § 573.5(c)(10). However, the agency has decided to redesignate it as § 573.5(c)(11) in the final rule because it has revised the numbering of the preceding paragraph. The amendment is otherwise identical to that proposed in the NPRM. No commenter raised any issues relating to this amendment.

Amendments to Part 576—Record Retention

NHTSA is amending 49 CFR 576.5 to provide that records concerning malfunctions that may be related to motor vehicle safety and that refer to a specific vehicle must be retained for eight years from the close of the model year during which the vehicle was manufactured (i.e., the date on which the last vehicle was produced for the model year). This amendment differs from that proposed in the NPRM. In the amendment as proposed, the eight-year time period began to run with the date the vehicle was sold, and retention would also have been required for records for five years after they were acquired or generated, if that was later than eight years after the date of sale.

NHTSA decided to change the language from that proposed in the NPRM after considering the comments of several manufacturers, whose objections to the proposal focused principally on the requirement that the eight years be counted from the date of sale. These manufacturers asserted that a requirement that records be kept according to sale date would be unworkable and unreasonably costly and burdensome. See comments of AAMA, AIAM, Chrysler, Navistar and Toyota. These commenters, as well as Blue Bird and Fleetwood, suggested that basing the record retention requirement on the model year of production would be more workable.

After careful consideration, NHTSA believes that the commenters have raised legitimate concerns. The suggested alternative would be more workable and less costly, and would not reduce the availability of relevant records.

The agency has also decided to eliminate the language in the NPRM that would have required manufacturers to maintain records for five years from the date they were acquired or generated, if that would be later than eight years from the date of sale. The number of records that would be retained beyond those that are generated within the first eight years after the model year of production is likely to be small. Moreover, the potential benefits would be slight, since most investigations of defects and noncompliances begin far earlier than eight years after production. However, notwithstanding this amendment, the agency retains the authority to require a manufacturer to retain records for vehicles more than eight years old if it has an open investigation of an alleged noncompliance or safety-related defect that includes such vehicles.

Amendments to Part 577—Defect and Noncompliance Notification

The agency is amending several sections of 49 CFR part 577 to revise the provisions regarding notification of safety-related defects and noncompliances with Federal motor vehicle safety standards.

Definitions

NHTSA is amending § 577.4, ''Definitions,'' to add definitions of the terms ''lessor,'' ''lessee'' and ''leased motor vehicle.'' As was the case with the amendment of the definition section of part 573 to incorporate these terms, the amendment to this section is being made to implement 49 U.S.C. 30119(f), the statutory section that requires that lessees of motor vehicles receive notification of safety-related defects and noncompliances.

The definition of ''lessor'' adopted today is slightly different from that in the NPRM. This is necessary to make it consistent with the definition of the same term in part 573 as amended today. The agency decided to adopt a suggestion of a commenter, NADA, that

defines the lessor as the owner, as reflected on the vehicle's title, of any five or more leased vehicles, as of the date of notification by the manufacturer of the recall. The definitions adopted today for the terms ''lessee'' and ''leased motor vehicle'' are the same as those in the NPRM. No commenter objected to the proposed changes in § 577.4.

Marking of Recall Notification Envelopes

The agency is amending § 577.5(a) to add a requirement for marking the envelope in which recall notification letters are sent by requiring that the envelope containing the notification bear, in all capital letters, the words ''SAFETY,'' ''RECALL'' and ''NOTICE,'' in any order. Other words may be included, and the type may be any size as long as it is larger than that used for the address. The language must be also be distinguishable from other wording on the front of the envelope in some manner other than size, such as by typeface (e.g., bold, italic), color, and/or underlining.

This amendment differs slightly from the proposal in the NPRM. The proposal would have required use of the phrase, ''SAFETY RECALL NOTICE'' in boldface capital letters. In response, several commenters suggested alternative wording. Others expressed the view that the current system works well enough, that the proposal did not give manufacturers enough flexibility, or that it would be too costly and/or burdensome to change the envelopes now in use.

NHTSA believes that the cost of adding new wording to recall notification envelopes will be relatively low, and will be outweighed by the safety benefit of making it more likely that the recipient will read the letter. Moreover, while the present system works well, in many cases there is need for improvement in the rate of owner response to recalls. Accordingly, the agency believes that it is appropriate to require manufacturers to mark the outside of recall notification envelopes to alert recipients to the importance of their contents.

However, there is merit to the view expressed in some comments that more flexibility should be allowed than would have been permitted under the proposal in the NPRM. The agency believes that the amendment adopted today should satisfy concerns about flexibility in envelope format while calling recipients' attention to the contents of the envelope. However, to ensure that envelopes comply with regulatory requirements, the amendment includes a requirement for one-time submission of envelope format to the agency. Once a given format is approved, the manufacturer need not submit its envelope format again before using it for other recalls, unless there are changes.

This review will, like the agency review of draft notification letters discussed earlier in this preamble, be limited to ensuring that the envelope markings comply with the minimum requirements of the regulations. The agency's experience with advance review of notification letters has been that it makes the notification process more efficient because it allows the manufacturer to correct any aspects of the material that do not comply with the regulations before undertaking the entire mailing. Advance review of envelope format would doubtless have the same effect.

Notification for Leased Vehicles

NHTSA is amending § 577.5 to add new subsections (h) and (i), which establish requirements for notification of lessees of leased vehicles concerning the existence of safety-related defects or noncompliances in their vehicles.

As proposed in the NPRM, subsection (h) would have required a manufacturer to send different notification letters, depending on whether or not the vehicle was leased. The proposal would have required the manufacturer to include language describing the lessor's duty to provide notification to the lessee only in letters sent by the manufacturer to a known lessor of a leased motor vehicle, and to provide the lessor with a copy of the notification to be sent to lessees.

A number of commenters noted that to the extent that the proposed amendment would require manufacturers to identify the vehicles in the recall population that are leased, it would present a problem because manufacturers often do not know which vehicles are leased and which are not. For example, Polk opposed the proposal on the grounds that state vehicle registration records do not identify lessors/lessees, so that obtaining this information for notification purposes would be extremely difficult. AIAM and Honda made similar comments.

Other commenters objected to notifying lessors or lessees separately from other vehicle owners, or to the requirement that manufacturers include a separate copy of the notification letter for the lessee in the mailing to the lessor. See comments of NADA, Toyota and Truck Manufacturers. These commenters suggested including in all owner notification letters a statement of a lessor's obligation to notify a lessee of the recall campaign.

NHTSA believes that there is merit to the concerns these commenters have raised about this aspect of the proposal. In addition, to the extent that the language of the proposal would have meant that only owners of vehicles known by the manufacturer to be leased vehicles would have received a notification that informed them of their obligation to provide notification to lessees, it would have meant that lessees of vehicles not known by the manufacturer to be leased—a potentially large number—would not receive any notification of safety-related defects or noncompliances and the availability of a remedy without charge.

Accordingly, NHTSA has decided to modify subsection (h) to require manufacturers to include in *all* notification letters a statement of lessors' obligations regarding recall notification letters. If the manufacturer is sending the letter to a recipient that it knows to be a lessor of lessee of a leased vehicle it may use language that is not identical to that in letters sent to recipients whose vehicles are not known to be leased. However, in all cases, the letter must clearly state the lessor's obligation under Federal law to provide notification to lessees of its vehicles and to comply with regulations regarding retaining records of notifications sent to lessees. The amendment does not require the manufacturer to furnish the lessor with a separate copy of the notification letter to be sent to lessees.

The final rule adopts § 577.5(i) as proposed in the NPRM. That subsection restates the requirement of 49 U.S.C. 30119(f), which requires a lessor who receives notification of a safety-related defect or noncompliance in a leased motor vehicle to send a copy of the notification to the lessee of the vehicle. It adds to the statutory language requirements that the lessor send the notification to the lessee as prescribed by new § 577.7(a)(2)(iv), which requires that the notice be sent by first-class mail, and that it be sent to the lessee no more than 10 calendar days from the date the lessor received the notification from the manufacturer. Finally, it clarifies that the requirement applies to all notifications, both initial and follow-up, except where the manufacturer has notified all of a lessor's lessees directly.

Timing of Owner Notification Letters

The agency is amending § 577.7, ''Time and Manner of Notification,'' with modifications from the language proposed in the NPRM. Those changes

are based on its consideration of the comments on the NPRM.

The NPRM proposed to amend § 577.7(a)(1) to give the agency authority to order a manufacturer to notify owners of a safety-related defect or noncompliance on a specific date, when it finds that such a letter would be in the public interest. A number of manufacturers objected to the original proposal because it did not contain any criteria upon which the decision would be based, and failed to require NHTSA to consult with the manufacturer before deciding to order notification on a specific date. The agency believes that it is desirable to provide a list of criteria to assure both manufacturers and the public that the decision is based on consideration of all appropriate and relevant factors. It is also desirable to allow the manufacturer to make its views known to the agency before the decision is made.

Accordingly, the agency has modified the proposed regulatory language by adding a list of factors that may be considered by the agency, and a requirement that the agency consult with the manufacturer before making the decision. The factors that may be considered include the severity of the risk to safety; the likelihood of occurrence of the defect or noncompliance; whether there is something that an owner can do to reduce either the likelihood of occurrence of the defect or noncompliance or the severity of the consequences; whether there will be a delay in the availability of the remedy from the manufacturer; and the anticipated length of any such delay. The agency may also consider other factors relevant to whether early notification would be in the interest of safety.

Several commenters objected to the proposed change on the grounds that the agency already has the authority to require owner notification on a specific date. NHTSA agrees with this statement, but does not agree that it is a reason for not adopting this provision. The agency believes that it is desirable to make this authority explicit because there have been instances when manufacturers have refused to notify owners of a safety-related defect or noncompliance in conformity with a NHTSA request. Having a regulation authorizing the agency to require notification on a date certain will make manufacturer compliance more certain.

AAMA and Chrysler commented that the change is unnecessary because the manufacturer, and not the agency, is in the best position to know when early notification (i.e., notification prior to the time a remedy is available) is warranted. NHTSA disagrees. As the agency charged by statute with enforcing the notification and remedy requirements of the Act, it is in the best position to consider objectively *all* of the factors, including the safety of the public, that need to be considered, and to give them appropriate weight. Based on some manufacturers' past history of undue reluctance to comply with NHTSA requests to notify owners of a defect or noncompliance prior to the availability of a remedy, the agency believes that it is unwise to entrust responsibility for making this judgment solely to the manufacturer. Moreover, the changes made in the NPRM language to give manufacturers the opportunity to submit their views should be adequate to address concerns expressed by some manufacturers that their concerns would not be considered.

The agency notes that it does not intend to exercise the authority to designate a date for owner notification letters except in cases where the commencement of the remedial campaign will be delayed substantially and there appear to be safety benefits associated with a prompt owner notification.

Advocates commented that all owners should be notified immediately after the agency is informed of the existence of the defect or noncompliance, so that they would be able to take measures to minimize the effect of the defect or noncompliance until the remedy is available. It proposes a two-step notification process for all recalls, with the first owner notification to be sent within 30 days of agency notification, and a second notice to be sent later regarding the remedy. CAS also supported a 30-day deadline for notification in all recalls.

As stated above in connection with the amendment to § 573.5(c)(8), the agency does not believe it would be productive to establish a 30-day deadline for all recalls, or to institute a mandatory two-step notification process for all recalls. Given that recalls can vary widely in such matters as the number of items, the severity of the hazard, the complexity of the remedy and the size and resources of the manufacturer, the agency believes that an approach that allows for flexibility in handling each recall individually is preferable. Further, the two-step notification process introduces the possibility of owner confusion. The agency believes that these factors, along with the increased cost of sending a second owner letter, will outweigh the safety benefit of such a process in most circumstances.

Timing of Notification to Lessees

The agency is also adding a new paragraph (iv) to subsection (a)(2) of § 577.7. The new paragraph requires that a lessor must send its lessees a copy of the manufacturer's notification letter by first-class mail within 10 days of receiving it. No commenter opposed this proposal.

Disclaimers

NHTSA is amending § 577.8, ''Disclaimers,'' to make clear that that section's prohibition of disclaimers of the existence of a safety-related defect or noncompliance applies equally to follow-up notifications. The agency received no comments on this proposal.

Follow-up Notification

The final rule also adds a new § 577.10, which sets forth the criteria under which the agency will determine whether a manufacturer must conduct a follow-up notification campaign and the requirements applicable to such campaigns. This new section implements 49 U.S.C. 30119(e) (formerly section 153(d) of the Act), which authorizes NHTSA to require manufacturers to send a second notification of a defect or noncompliance, ''in such manner as (NHTSA) may by regulation prescribe,'' where the agency determines that the initial notification campaign has not resulted in an adequate number of vehicles or items of equipment being returned for remedy. With minor changes, the final rule adopts the proposals in the NPRM.

New § 577.10(b) sets forth criteria that NHTSA may consider in making a determination under this provision. The criteria include, but are not limited to, the percentage of covered vehicles or items of equipment that have already been returned for remedy; the amount of time that has elapsed since the prior notification was sent; the likelihood that a follow-up notification will increase the number of vehicles or items of equipment receiving the remedy; the seriousness of the safety risk from the defect or noncompliance; and whether the prior notification(s) undertaken by the manufacturer complied with the requirements of the statute and regulations.

The agency does not intend that this list of factors be exhaustive. Accordingly, paragraph (b)(6) makes it clear that NHTSA may consider additional factors as it deems appropriate.

Section 577.10(c) provides that a manufacturer is required to provide follow-up notification only with respect

to vehicles or items of equipment that have not been returned for remedy pursuant to the prior notification(s). Pursuant to paragraph (d), the manufacturer is required to send the follow-up notification to all categories of recipients (i.e., owners, first purchasers, lessors, lessees, manufacturers, distributors, dealers, and retailers) that received the prior notification(s), except where the agency determines that a lesser scope is appropriate.

Paragraph (e) describes the required contents of the follow-up notification. The notice will have to include a statement that identifies it as a follow-up to an earlier notification, and must urge the recipient to present the vehicle or item of equipment for remedy. In addition, except where the agency determines otherwise, the notice must include the other information required to be included in an initial notification letter.

Paragraph (f) requires that the outside of the envelope or other communication containing the follow-up notification meet the same requirements as an envelope containing an initial notification, as set forth in 49 CFR 577.5(a). Unlike the NPRM, the final rule does not recite those requirements verbatim, but rather incorporates them by reference to the appropriate section of these regulations.

Paragraph (g) allows the agency to authorize use of postcards or other media rather than letters for follow-up notification where appropriate.

AAMA and Blue Bird commented that the regulation is not needed because manufacturers already send out follow-up notification, and that follow-up notifications are likely to cause owner confusion. These comments challenge the wisdom of the decision by Congress to authorize NHTSA to require follow-up notification, rather than the substantive merit of NHTSA's proposed regulation. Since Congress has decided that it is appropriate to give NHTSA this authority, and has authorized NHTSA to promulgate implementing regulations, these comments are not persuasive.

AIAM and Toyota commented that the regulation should mandate, rather than permit, NHTSA to consider the factors listed. The agency believes that mandatory language would be unwise because it would unduly restrict its discretion. Flexibility is essential to administration of the agency's recall program, given the highly varied nature of safety recalls. However, the agency will generally consider the enumerated factors, since they are relevant to the need for a follow-up notification.

The NPRM proposed that the scope, timing, form and content of the follow-up notification would be ''designed by the Administrator, in consultation with the manufacturer.'' AIAM commented that the regulation should state that the follow-up notification letter will be ''developed,'' rather than ''designed'' by the agency, and that the content of the letter should be a cooperative effort between NHTSA and the manufacturer. Toyota also commented that the agency should only be involved in ''approving'' the follow-up notification, not in ''designing'' it; and that if NHTSA has problems with a manufacturer's follow-up notification, it should consult with the manufacturer to work out the problem.

The agency interprets these comments to express reservations about the extent of NHTSA's control over follow-up notification letters. The agency believes that it must have such control, in order to carry out its statutory responsibility to maximize the effectiveness of recall campaigns. However, the agency has decided to change the word ''designed'' in § 577.10(a) to ''established,'' to reflect the fact that the scope, timing, form, and content of the follow-up notification will result from consultation between NHTSA and the manufacturer, rather than from independent NHTSA action.

Advocates and CAS commented that evaluation of safety risk should not be a criterion equal to the others, since the existence of a recall indicates that there is a safety risk. While recalls under the Act are by their nature safety-related, some defects and noncompliances pose a much greater risk to safety than others, by virtue of such factors as the severity of the consequences and the likelihood that the problem will occur. NHTSA believes that it is entirely appropriate for it to consider the degree of the risk to safety as a factor in deciding whether to require a manufacturer to undertake a follow-up notification. However, the agency notes that it is not required to give equal weight to all of the listed criteria.

Advocates and CAS also favored setting a minimum permissible completion rate for all recalls, with follow-up notification for all recalls falling below that percentage. Midland commented that NHTSA should define what is considered to be an inadequate completion rate; and Navistar said NHTSA should set ''guidelines'' for when a follow-up notification would be required.

As previously stated, NHTSA believes that it is important for it to retain substantial discretion and flexibility in order to carry out the responsibility to maximize the effectiveness of recalls. Setting a minimum completion requirement for all recalls would seriously restrict this flexibility. Moreover, such a system would be neither fair nor workable, given the number of factors that affect the completion rate, such as the nature of the item (whether vehicle, tire or equipment), its age, the seriousness of the defect, and the means used to notify owners (e.g., individual notification letter or public notice).

CAS suggested that follow-up notification should be required for all recalls involving a defect or noncompliance that poses a significant safety risk. In addition to the difficulty of defining when a defect or noncompliance presents a ''significant safety risk,'' the agency does not believe it would be reasonable to impose a requirement such as this, which fails to take into account whether a recall has achieved a high completion rate.

CAS also commented that the follow-up notification should be sent by certified mail, not post card. NHTSA continues to believe that it should retain discretion to decide what medium or media would be the most effective for follow-up notification in each individual case.

Mack Truck supported the follow-up notification regulation, noting that it has a practice of automatically sending a second notice if recall work has not been done on a vehicle by the end of the second calendar quarter of a recall campaign.

Navistar commented that the recall completion rate should be based on the number of vehicles in service, not the number produced. The agency assumes that this comment refers to one of the factors the NPRM listed for consideration by NHTSA in deciding whether to require follow-up notification: the percentage of vehicles or items of equipment that have been presented for remedy (proposed § 577.10(b)(1)). The agency believes it is reasonable to continue its practice of computing recall completion rates based on the number of recalled units produced, rather than the number in service as suggested by Navistar. The number of items produced is a definite number that is provided to NHTSA by the manufacturer when it reports its decision that there is a safety-related defect or noncompliance, whereas the number of items in service can never be more than a rough estimate. Having such a definite number makes it possible for NHTSA to compute recall completion rates with greater accuracy than would be possible using an estimate of how many items are in service.

Moreover, the number of items in service will change during the course of any recall, which would greatly complicate the task of arriving at precise completion rates. Moreover, the final rule specifically provides that recall completion rate is only one of several criteria upon which the agency will base a decision to require a follow-up notification. In deciding whether a recall completion rate is inadequate, the agency will consider the age of the recalled items and other factors which might significantly reduce the number of items in service at the time of the recall. It recognizes that a lower completion rate is to be expected where there has been significant attrition in the population of items in use by the time of the recall, or where the nature of the recalled item (e.g., something that is disposable or very inexpensive) makes it less likely that owners will respond to a recall.

Navistar also commented that NHTSA should only require a follow-up notification where it can be shown that it will significantly improve the completion rate. Such a standard is unworkable and is also inconsistent with the language Congress used in authorizing NHTSA to require follow-up notification. It would be difficult, if not impossible, to demonstrate in advance that a follow-up notification would result in a significant improvement of the recall completion rate. Moreover, the Navistar standard is inconsistent with 49 U.S.C. 30119(e), which authorizes the agency to order a second notification when ''notification * * * has not resulted in an adequate number of vehicles or items of motor vehicle equipment being returned for remedy.''

Navistar also expressed concern that unnecessary follow-up notices could result in customer confusion and wasted effort, especially when recalled vehicles are old and a significant number have been scrapped. The agency believes that the criteria to be considered by the agency will provide adequate protection against the ''wasted effort'' that Navistar fears.

Polk commented that state vehicle registration records do not identify lessors/lessees, so that obtaining this information for renotification purpose would be extremely difficult. The agency has addressed these concerns in the sections of the final rule concerned with leased vehicle notification by requiring all notification letters to include a statement directing lessors to notify their lessees. See 49 CFR 577.5(i).

Toyota suggested adding another factor to be considered: the likelihood that the owner will experience the safety-related defect or noncompliance. NHTSA does not believe that this is an appropriate criterion. In the large majority of recalls, there is no way of predicting the likelihood that an owner will experience the defect or noncompliance. It would be inconsistent with the purpose of the Act, which is to prevent accidents, injuries and fatalities before they happen, to fail to notify an owner based on a prediction that the problem is not likely to occur in a particular vehicle. The final rule does take account of the fact that there may be instances in which the population that is appropriate for follow-up notification will be smaller than that covered by the original recall campaign. Section 577.10(d) allows NHTSA to narrow the scope of the population that will receive follow-up notification in appropriate instances.

Toyota also commented that a low completion rate should not be the only reason the agency uses to justify requiring renotification. In § 577.10(b), the final rule lists five specific factors, including but not limited to the completion rate, that the agency may consider. It also authorizes NHTSA to consider other factors that are consistent with the purpose of the Act.

NHTSA's Toll-Free Hotline

The agency is adopting a final rule amending § 577.5(g)(1)(vii) to state that the telephone number for its toll-free Auto Safety Hotline for calls originating in the Washington, D.C. area is (202) 366–0123. The agency received no comments on this proposed change.

Technical Amendments

NHTSA is adopting several technical amendments to 49 CFR Parts 552, 554, 573 and 577 that are needed to make these parts consistent with the new codification of the enabling statute as Chapter 301 of Title 49 of the United States Code (Pub. L. 103–272 (July 5, 1994)) and with the language of the amendments adopted today. These amendments did not appear in the NPRM, but do not require notice and comment because they are technical amendments only. They do not change the meaning of these regulations.

With respect to part 552, the technical amendments are as follows. Because the final rule amends the title of § 552.8 to replace ''Determination whether to commence a proceeding'' with ''Notification of agency action on the petition,'' the contents to part 552 is amended to reflect this change. In addition, § 30162(a) of Title 49 of the United States Code now refers to a petition for a proceeding to *decide*, rather than to *determine*, whether to issue an order requiring a manufacturer to provide notification and remedy for a safety-related defect or noncompliance. Accordingly, § 552.1, Scope, is amended to change the word ''determination'' to ''decision.'' Section 552.2, Purpose, is amended to change ''determinations'' to ''decisions.'' Section 552.3, General, is amended to change ''determine'' to ''decide.'' The first sentence of § 552.7, Public Meeting, is amended to change ''determination'' to ''decision.'' Finally, § 552.9(b), Grant of Petition, is amended to change ''determine'' to ''decide.''

The agency is also adopting the following technical amendments to part 554. The contents section is amended to change the word ''determinations'' to ''decisions'' for the headings of §§ 554.10 and 554.11. Section 554.2, Purpose, is amended to change ''National Traffic and Motor Vehicle Safety Act (the Act)'' to ''49 U.S.C. Chapter 301.'' Section 554.3, Application, is amended to change the statutory citations to reflect the new codification in Title 49. The headings of §§ 554.10 and 554.11 are amended to change the word ''determinations'' to ''decisions,'' in order to be consistent with the new statutory language at 49 U.S.C. 30118. The text of these subsections is also amended to replace the words ''determine[s]'' or ''determination'' with ''decide[s]'' or ''decision'', respectively, wherever they appear.

The technical amendments to part 573 are as follows. Paragraphs (b)–(f) of § 573.3 are amended to change the words ''determined to exist'' to ''decided to exist.'' The definition of ''Act'' in the first paragraph of § 573.4, Definitions, is amended to replace ''the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381, *et seq.*)'' with ''49 U.S.C. Chapter 301.'' The agency is also amending the second sentence of § 573.5(c)(1) to replace ''§ 110(e) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1399(e)'' with ''49 U.S.C. § 30164(a).'' The latter two amendments are necessary because the July 1994 codification repealed the National Traffic and Motor Vehicle Safety Act of 1966, as amended, and replaced it with a codification in Title 49 of the United States Code.

The agency is adopting the following technical amendments to part 577. The Contents to part 577 is amended by changing ''Sec. 577.5 Notification pursuant to a manufacturer's determination'' to ''Sec. 577.5 Notification pursuant to a manufacturer's decision''; and by changing ''Sec. 577.6 Notification pursuant to Administrator's

determination'' to ''Sec. 577.6 Notification pursuant to Administrator's decision.'' Section 577.4, Definitions, is amended by changing the definition of the term ''Act'' from ''the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1391 *et seq.*'' to ''49 U.S.C. Chapter 301.''

The title of section 577.5 is changed from ''Notification pursuant to a manufacturer's determination'' to ''Notification pursuant to a manufacturer's decision.'' The first sentence of § 577.5(a) is amended by changing ''section 157 of the Act'' to ''49 U.S.C. 30118(e).'' Paragraphs (1) and (2) of § 577.5(c) are amended to replace the word ''determined'' with ''decided'' in the text to be used by manufacturers in recall notification letters. Section 577.5(d) is amended by changing ''determines'' to ''decides.''

The title of § 577.6 is changed from ''Notification pursuant to Administrator's determination'' to ''Notification pursuant to Administrator's decision.'' Section 577.6(a) is amended by changing ''section 152 of the Act'' to ''49 U.S.C. section 30118(b).'' Section 577.6(b) is amended by changing ''determines'' to ''decides'' in subsection (3); by changing ''determination'' to ''decision'' in subsection (5); by changing ''determination'' to ''decision'' in subsections (9)(i) (A) and (C); and by changing ''determination'' to ''decision'' in subsections (10)(iv) and (11). Section 577.6(c)(1) is amended by changing ''determination'' to ''decision.'' Section 577.7, Time and manner of notification, is amended by revising subsection (a)(2)(ii)(B) by replacing ''determined'' by ''decided,'' by replacing ''necessary'' with ''required'' and by replacing ''determine'' with ''require.''

Rulemaking Analyses and Notices

1. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this final rule and determined that it is neither ''major'' within the meaning of Executive Order 12291 nor ''significant'' within the meaning of the Department of Transportation regulatory policies and procedures.

The provisions of this final rule that would result in additional costs would be the one that extends from five to a maximum of eight years the period for which motor vehicle manufacturers must retain records concerning malfunctions that may be related to motor vehicle safety; and the one that authorizes NHTSA to require manufacturers of motor vehicles and motor vehicle equipment to mail a follow-up notification of a safety-related defect or noncompliance if it determines that the number of vehicles or items of equipment that have received the remedy is inadequate.

Other provisions that will result in additional costs are the one that would require vehicle lessors to mail notification of safety-related defects or noncompliances with Federal motor vehicle safety standards to each lessee of a vehicle covered by the notification and remedy campaign and the requirement that lessors maintain lists of lessees to whom they send such notification.

The costs associated with requiring manufacturers to retain records for a longer period should be minimal if not negligible, and would be offset by the benefit that would result from the manufacturers' ability to determine the existence of safety-related defects and noncompliances with safety standards in a wider range of vehicles, as well as the enhancement of NHTSA's enforcement efforts, particularly with respect to latent defects and noncompliances. The cost of sending out a follow-up notification will be less than that incurred for an initial notification, as it will be required only in those cases in which the agency makes a determination that the response to the first notification is inadequate; and will only involve a fraction of the vehicles or items of equipment subject to the initial recall, i.e., those that have not yet been remedied. The cost of the follow-up notification will be outweighed by the benefit of increasing the number of noncompliant and defective vehicles and items of motor vehicle equipment that are remedied. In addition, the provisions relating to follow-up notification are required by the amendments added by ISTEA.

The cost of vehicle lessor notification of lessees is offset by the safety benefit that would result from the increased number of individuals who would return for remedy a vehicle or item of equipment that has a safety-related defect or does not comply with a Federal motor vehicle safety standard. In addition, this provision is required by the amendments added by ISTEA.

The cost of the requirement that vehicle lessors maintain lists of lessees of leased vehicles involved in notification and remedy campaigns is outweighed by the fact that these records will enable NHTSA to enforce the statutory requirement that lessees be notified of the existence of safety-related defects or standards noncompliances in their vehicles and of the availability of a remedy without charge for the defect or noncompliance. In addition, the information to be retained is minimal, consisting only of the identities of the vehicle, the lessee and the recall, and the date the lessor sent the notification to the lessee.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The regulations implementing the statutory amendment authorizing NHTSA to require a follow-up notification in instances where it determines that an initial notification has not resulted in the remedy of an adequate number of defective or non-complying vehicles or items of motor vehicle equipment will affect motor vehicle equipment manufacturers who are small businesses. However, the agency anticipates that the effect on those entities will not be significant because the proposed regulations implementing this provision allow flexibility in the amount of information that would be required for the second notification, and also permit reducing postage costs through the use of post-cards instead of first-class letters in appropriate circumstances.

The new provisions requiring lessors to notify lessees of safety-related defects or noncompliances in leased motor vehicles, which are being adopted pursuant to a statutory amendment requiring such notification, will also affect vehicle lessors who are small businesses. However, NHTSA anticipates that the effect of these amendments on these entities will be minimized by the exception to the requirement for notification by the lessor in cases where a lessor and a manufacturer have agreed that the manufacturer will notify lessees directly. In addition, the amendments provisions should result in a safety benefit as more leased vehicles will be returned for remedy of safety-related defects and noncompliances with Federal motor vehicle safety standards.

With respect to the additional recordkeeping requirements adopted for vehicle lessors, the amount of information required is small and should not place any significant cost burdens on the lessors. The information is essential to the agency's ability to enforce the new provisions requiring lessors to notify lessees of safety-related defects and noncompliances with Federal motor vehicle safety standards in their vehicles, and the economic

impact will be outweighed by the benefit to safety from NHTSA's ability to enforce this provision effectively.

To the extent the above amendments do have an impact on small businesses, those impacts are minimal and would be offset by the safety benefits that they would provide.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has analyzed the environmental impacts of this rulemaking action and determined that implementation of this action will not have a significant impact on the quality of the human environment. The new record-keeping requirements will not introduce any new or harmful matter into the environment.

4. Paperwork Reduction Act

Certain provisions in the final rule that would require manufacturers to submit information to NHTSA, and to retain other information, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The provision in the rule that would require vehicle lessors to retain information is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, this requirement has been submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the proposed information collection requirements were solicited in the NPRM. No comments on these requirements were received by NHTSA.

5. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 552

Administrative practice and procedure; Motor vehicle safety; Reporting and recordkeeping requirements.

49 CFR Part 554

Administrative practice and procedure; Motor vehicle safety.

49 CFR Part 573

Imports; Motor vehicle safety; Motor vehicles; Reporting and recordkeeping requirements; tires.

49 CFR Part 576

Motor vehicle safety; Reporting and recordkeeping requirements.

49 CFR Part 577

Motor vehicle safety.

In consideration of the foregoing, parts 552, 554, 573, 576, and 577 of title 49 of the Code of Federal Regulations are amended as follows:

PART 552—PETITIONS FOR RULEMAKING, DEFECT, AND NONCOMPLIANCE ORDERS

1. The authority citation for Part 552 is revised to read as follows:

Authority: 49 U.S.C. 30111, 30118, 30162; delegation of authority at 49 CFR 1.50.

2.–3. Section 552.1 is revised to read as follows:

§ 552.1 Scope.

This part establishes procedures for the submission and disposition of petitions filed by interested persons pursuant to 49 U.S.C. Chapters 301, 305, 321, 323, 325, 327, 329 and 331 to initiate rulemaking or to make a decision that a motor vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety.

4. Section 552.2 is revised to read as follows:

§ 552.2 Purpose.

The purpose of this part is to enable the National Highway Traffic Safety Administration to identify and respond on a timely basis to petitions for rulemaking or defect or noncompliance decisions, and to inform the public of the procedures following in response to such petitions.

5. Section 552.3 is revised to read as follows:

§ 552.3 General.

Any interested person may file with the Administrator a petition requesting him:

(a) to commence a proceeding respecting the issuance, amendment or revocation of a motor vehicle safety standard, or

(b) to commence a proceeding to decide whether to issue an order concerning the notification and remedy of a failure of a motor vehicle or item of replacement equipment to comply with an applicable motor vehicle safety standard or a defect in such vehicle or equipment that relates to motor vehicle safety.

6. Section 552.6 is revised to read as follows:

§ 552.6 Technical review.

The appropriate Associate Administrator conducts a technical review of the petition. The technical review may consist of an analysis of the material submitted, together with information already in the possession of the agency. It may also include the collection of additional information, or a public meeting in accordance with § 552.7.

7. Section 552.8 is revised to read as follows:

§ 552.8 Notification of agency action on the petition.

After considering the technical review conducted under § 552.6, and taking into account appropriate factors, which may include, among others, allocation of agency resources, agency priorities and the likelihood of success in litigation which might arise from the order, the Administrator will grant or deny the petition. NHTSA will notify the petitioner of the decision to grant or deny the petition within 120 days after its receipt of the petition.

PART 554—STANDARDS ENFORCEMENT AND DEFECT INVESTIGATIONS

8. The authority citation for part 554 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30111–112, 30117–121, 30162, 30165–67; delegation of authority at 49 CFR 1.50.

9.–10. Section 554.2 is revised to read as follows:

§ 554.2 Purpose.

The purpose of this part is to inform interested persons of the procedures followed by the National Highway Traffic Safety Administration in order more fairly and effectively to implement 49 U.S.C. Chapter 301.

11. Section 554.3 is revised to read as follows:

§ 554.3 Application.

This part applies to actions, investigations, and defect and noncompliance decisions of the National Highway traffic Safety Administration under 49 U.S.C. 30116, 30117, 30118, 30120 and 30165.

12. Section 554.10 is amended by revising paragraphs (a), (b), (c), introductory test, (c)(2) and (c)(4), and by removing paragraph (e), to read as follows:

§ 554.10 Initial decisions and public meetings.

(a) An initial decision of failure to comply with safety standards or of a safety-related defect is made by the Administrator or his delegate based on the completed investigative file compiled by the appropriate office.

(b) The decision is communicated to the manufacturer in a letter which makes available all information on which the decision is based. The letter advises the manufacturer of his right to present information, views, and arguments to establish that there is no defect or failure to comply or that the alleged defect does not affect motor vehicle safety. The letter also specifies the time and place of a public meeting for the presentation of arguments or sets a date by which written comments must be submitted. Submission of all information, whether at a public meeting or in written form, is normally scheduled about 30 days after the initial decision. The deadline for submission of information can be extended for good cause shown.

(c) Public notice of an initial decision is made in a **Federal Register** notice that—

* * * * *

(2) Summarizes the information on which the decision is based.

* * * * *

(4) States the time and place of a public meeting or the deadline for written submission in which the manufacturer and interested persons may present information, views, and arguments respecting the decision.

* * * * *

13. Section 554.11 is revised to read as follows:

§ 554.11 Final decisions.

(a) The Administrator bases his final decision on the completed investigative file and on information, views, and arguments submitted at the public meeting.

(b) If the Administrator decides that a failure to comply or a safety-related defect exists, he orders the manufacturer to furnish the notification specified in 49 U.S.C. 30118 and 30119 and to remedy the defect or failure to comply.

(c) If the Administrator closes an investigation following an initial determination, without making a final determination that a failure to comply or a safety-related defect exists, he or she will so notify the manufacturer and publish a notice of that closing in the **Federal Register**.

(d) A statement of the Administrator's final decision and the reasons for it appears in each completed public file.

PART 573—DEFECT AND NONCOMPLIANCE REPORTS

14. The authority citation for part 573 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

§ 573.3 [Amended]

15. Section 573.3 is amending by revising paragraphs (b) through (f) to read as follows:

* * * * *

(b) In the case of a defect or noncompliance decided to exist in a motor vehicle or equipment item imported into the United States, compliance with §§ 573.5 and 573.6 by either the fabricating manufacturer or the importer of the vehicle or equipment item shall be considered compliance by both.

(c) In the case of a defect or noncompliance decided to exist in a vehicle manufactured in two or more stages, compliance with §§ 573.5 and 573.6 by either the manufacturer of the incomplete vehicle or any subsequent manufacturer of the vehicle shall be considered compliance by all manufacturers.

(d) In the case of a defect or noncompliance decided to exist in an item of replacement equipment (except tires) compliance with §§ 573.5 and 573.6 by the brand name or trademark owner shall be considered compliance by the manufacturer. Tire brand name owners are considered manufacturers (49 U.S.C. 10102(b)(1)(E)) and have the same reporting requirements as manufacturers.

(e) In the case of a defect or noncompliance decided to exist in an item of original equipment used in the vehicles of only one vehicle manufacturer, compliance with §§ 573.5 and 573.6 by either the vehicle or equipment manufacturer shall be considered compliance by both.

(f) In the case of a defect or noncompliance decided to exist in original equipment installed in the vehicles of more than one manufacturer, compliance with § 573.5 is required of the equipment manufacturer as to the equipment item, and of each vehicle manufacturer as to the vehicles in which the equipment has been installed. Compliance with § 573.6 is required of the manufacturer who is conducting the recall campaign.

16. Section 573.4 is amended by revising the definition of ''Act'' and by adding the following definitions, in alphabetical order, to read as follows:

§ 573.4 Definitions.

* * * * *

Act means 49 U.S.C. Chapter 301.

* * * * *

Leased motor vehicle means any motor vehicle that is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelve months preceding the date of notification by the vehicle manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in the motor vehicle.

Lessee means a person who is the lessee of a leased motor vehicle as defined in this section.

Lessor means a person or entity that is the owner, as reflected on the vehicle's title, of any five or more leased vehicles (as defined in this section), as of the date of notification by the manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in one or more of the leased motor vehicles.

Readable form means a form readable by the unassisted eye or readable by machine. If readable by machine, the submitting party must obtain written confirmation from the Office of Defects Investigation immediately prior to submission that the machine is readily available to NHTSA. For all similar information responses, once a manufacturer has obtained approval for the original response in that form, it will not have to obtain approval for future submissions in the same form. In addition, all coded information must be accompanied by an explanation of the codes used.

17. Section 573.5 is amended by revising the second sentence of paragraph (c)(1) and the introductory text of paragraph (c)(2), by adding paragraphs (c)(2)(iv) and (v), by redesignating paragraph (c)(8) as paragraph (c)(8)(i), by adding new paragraphs (c)(8)(ii)—(vi), and by adding new paragraphs (c)(10) and (c)(11), to read as follows:

§ 573.5 Defect and noncompliance information report.

* * * * *

(c) * * * In the case of a defect or noncompliance decided to exist in an imported vehicle or item of equipment, the agency designated by the fabricating manufacturer pursuant to 49 U.S.C. section 30164(a) shall be also stated.

* * *

(2) Identification of the vehicles or items of motor vehicle equipment potentially containing the defect or noncompliance, including a description of the manufacturer's basis for its

determination of the recall population and a description of how the vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment that the manufacturer has not included in the recall.

* * * * *

(iv) In the case of motor vehicles or items of motor vehicle equipment in which the component that contains the defect or noncompliance was manufactured by a different manufacturer from the reporting manufacturer, the reporting manufacturer shall identify the component and the manufacturer of the component by name, business address, and business telephone number. If the reporting manufacturer does not know the identity of the manufacturer of the component, it shall identify the entity from which it was obtained.

(v) In the case of items of motor vehicle equipment, the manufacturer of the equipment shall identify by name, business address, and business telephone number every manufacturer that purchases the defective or noncomplying component for use or installation in new motor vehicles or new items of motor vehicle equipment.

* * * * *

(8)(i) A description of the manufacturer's program for remedying the defect or noncompliance. The manufacturer's program will be available for inspection in the public docket, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington DC 20590.

(ii) If a manufacturer anticipates that its notification campaign will commence more than 30 days after it has notified NHTSA that a safety-related defect or noncompliance exists, or anticipates that the notification campaign will not be completed within 75 days after it has notified NHTSA of that decision, the manufacturer shall include with its report to NHTSA a proposed schedule for the notification campaign, from commencement through completion. If the remedy for the defect or noncompliance is not available at the time of the owner notification, the report shall state when the remedy will be provided to owners. The manufacturer shall also identify and describe in detail the factors on which the proposed schedule is based. The manufacturer's proposed schedule shall be subject to disapproval by the Administrator, if the Administrator determines that it will lead to unreasonable delays in the notification of and remedy for the defect or noncompliance.

(iii) The manufacturer shall describe any factors that it anticipates could interfere with its ability to adhere to the proposed schedule and state with specificity the likely effect of each such factor.

(iv) A manufacturer that is unable to conduct its notification campaign in accordance with the schedule submitted pursuant to paragraph (c)(8)(ii) of this section, or that is otherwise unable to complete owner notification within 75 days after notifying NHTSA of its defect or noncompliance decision, shall promptly advise NHTSA of its inability to do so and provide an explanation for such inability, along with a revised schedule, or a new schedule in those instances in which the manufacturer had not previously submitted a schedule. Such submission shall contain the basis for the new or revised schedule, which shall also be subject to disapproval by the Administrator.

(v) If a manufacturer intends to file a petition for an exemption from the recall requirements of the Act on the basis that a defect or noncompliance is inconsequential as it relates to motor vehicle safety, it shall notify NHTSA of that intention in its original report to NHTSA of the defect or noncompliance. If such a petition is filed and subsequently denied, the time period under which an owner notification schedule must be filed under paragraph (c)(8) of this section shall run from the date of the denial of the petition.

(vi) If a manufacturer advises NHTSA that it intends to file such a petition, and does not do so within the 30-day period established by 49 CFR 556.4(c), the time periods for ascertaining whether an owner notification schedule must be filed under this section shall run from the end of that 30-day period. Any such schedule must be filed no later than the fifth business day after that date.

* * * * *

(10) Except as authorized by the Administrator, the manufacturer shall submit a copy of its proposed owner notification letter to the Office of Defects Investigation (''ODI'') no fewer than five Federal government business days before it intends to begin mailing it to owners. Submission shall be made by any means which permits the manufacturer to verify promptly that the copy of the proposed letter was in fact received by ODI and the date it was received by ODI.

(11) The manufacturer's campaign number, if it is not identical to the identification number assigned by NHTSA.

18. Section 573.6 is amended by revising the first sentence of paragraph (a), adding a new paragraph (b)(6) and adding a new paragraph (d) to read as follows:

§ 573.6 Quarterly reports.

(a) Each manufacturer who is conducting a defect or noncompliance notification campaign to manufacturers, distributors, dealers, or owners shall submit to NHTSA a report in accordance with paragraphs (b), (c), and (d) of this section. * * *

(b) * * *

(6) In reports by equipment manufacturers, the number of items of equipment repaired and/or returned by dealers, other retailers, and distributors to the manufacturer prior to their first sale to the public.

* * * * *

(d) The reports required by this section shall be submitted in accordance with the following schedule, except that if the due date specified below falls on a Saturday, Sunday or Federal holiday, the report shall be submitted on the next day that is a business day for the Federal government:

(1) For the first calendar quarter (January 1 through March 31), on or before April 30;

(2) For the second calendar quarter (April 1 through June 30), on or before July 30;

(3) For the third calendar quarter (July 1 through September 30), on or before October 30; and

(4) For the fourth calendar quarter (October 1 through December 31), on or before January 30.

19. Section 573.7 is amended by revising the heading of the section and by adding new paragraphs (d) and (e) to read as follows:

§ 573.7 Lists of purchasers, owners, lessors and lessees.

* * * * *

(d) If a manufacturer has in its possession at the time it sends notification of a safety-related defect or noncompliance information that a vehicle concerning which notification has been sent is a leased motor vehicle, the list(s) maintained by a manufacturer pursuant to paragraph (a) of this section shall identify the vehicle as a leased motor vehicle, and shall identify the person or entity to whom notification was sent as the lessor or lessee of the vehicle (as appropriate), if that information is known to the manufacturer. The manufacturer may also maintain a separate list which includes only leased vehicles, provided that it is clearly identified as such, and that it meets the other requirements for a list prepared pursuant to paragraph (a) of this section.

(e) Each lessor of leased motor vehicles shall maintain, in a form suitable for inspection, such as computer information storage devices or card files, a list of the names and addresses of all lessees to which the lessor has provided notification of a defect or noncompliance pursuant to 49 CFR 577.5(i). The list shall also include the make, model, and vehicle identification number of each such leased vehicle, and either the date on which the lessor mailed notification of the defect or noncompliance to the lessee, or a statement that the manufacturer agreed on a specified date to mail the notification directly to the lessee. A manufacturer that provides notification directly to lessees shall maintain a list containing the same information as that required by this paragraph to be maintained by lessors sending notifications to lessees. The information required by this paragraph must be retained by the manufacturer or lessor (whichever sent the notification to the lessee) for one calendar year from the date the vehicle lease expires.

20. Section 573.8 is revised to read as follows:

§ 573.8 Notices, bulletins, and other communications.

Each manufacturer shall furnish to the NHTSA a copy of all notices, bulletins, and other communications (including those transmitted by computer, telefax or other electronic means, and including warranty and policy extension communiqués and product improvement bulletins), other than those required to be submitted pursuant to § 573.5(c)(9), sent to more than one manufacturer, distributor, dealer, lessor, lessee, or purchaser, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications), whether or not such defect is safety-related. Copies shall be in readable form and shall be submitted monthly, not more than five (5) working days after the end of each month.

PART 576—RECORD RETENTION

21. The authority citation for part 576 is revised to read as follows:

Authority: 49 U.S.C. 30112, 30115, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

22. Section 576.5 is revised to read as follows:

§ 576.5 Basic requirements.

Each manufacturer of motor vehicles shall retain as specified in § 576.7 every record described in § 576.6 for eight years from the last date of the model year in which the vehicle to which it relates was produced.

23. Section 576.6 is revised to read as follows:

§ 576.6 Records.

Records to be retained by manufacturers under this part include all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. Such records include, but are not limited to, communications from vehicle users and memoranda of user complaints; reports and other documents, including material generated or communicated by computer, telefax or other electronic means, that are related to work performed under, or claims made under, warranties; service reports or similar documents, including electronic transmissions, from dealers or manufacturer's field personnel; and any lists, compilations, analyses, or discussions of malfunctions that may be related to motor vehicle safety contained in internal or external correspondence of the manufacturer, including communications transmitted electronically.

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

24. The authority citation for part 577 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30115, 30117–121, 30166–167; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

25.–26. Section 577.4 is amended by revising the definition of ''Act'', and by adding the following definitions, in alphabetical order, to read as follows:

§ 577.4 Definitions.

* * * * *

Act means 49 U.S.C. Chapter 30101–30169.

* * * * *

Leased motor vehicle means any motor vehicle that is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelve months preceding the date of notification by the vehicle manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in the motor vehicle.

Lessee means a person who is the lessee of a leased motor vehicle as defined in this section.

Lessor means a person or entity that is the owner, as reflected on the vehicle's title, of any five or more leased vehicles (as defined in this section), as of the date of notification by the manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in one or more of the leased motor vehicles.

* * * * *

27. Section 577.5 is amended by revising the heading of the section and the fourth sentence of paragraph (a), by adding a new fifth, sixth and seventh sentence to paragraph (a), by revising paragraphs (c)(1) and (2) and the parenthetical in paragraph (g)(1)(vii), and by adding new paragraphs (h) and (i), to read as follows:

§ 577.5 Notification pursuant to a manufacturer's decision.

(a) * * * The information required by paragraphs (d) through (h) of this section may be presented in any order. The manufacturer shall mark the outside of each envelope in which it sends an owner notification letter with a notation that includes the words ''SAFETY,'' RECALL,'' and ''NOTICE,'' all in capital letters and in type that is larger than that used in the address section, and is also distinguishable from the other type in a manner other than size. Except where the format of the envelope has been previously approved by NHTSA, each manufacturer must submit the envelope format it intends to use to NHTSA at least 5 Federal government business days before mailing to owners, in the same manner as is required by § 573.5(c)(9) for owner notification letters.

* * * * *

(c) * * *

(1) ''(Manufacturer's name or division) has decided that a defect which relates to motor vehicle safety exists in (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer);'' or

(2) ''(Manufacturer's name or division) has decided that (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer) fail to conform to Federal Motor Vehicle Safety Standard No. (number and title of standard).''

(g) * * *

(1) * * *

(vii) * * * (Washington, DC area residents may call 202–366–0123) * * *

* * * * *

(h) A statement that describes a lessor's obligation under Federal law to provide a lessee of the vehicle to which the notification letter refers with a copy of the letter; and to maintain a record which identifies the lessee(s) to whom it sent a copy of the letter, the date it sent the letter, and the Vehicle Identification Number(s) of the vehicle(s) that it has leased to that lessee and to which the notification applies. The statement must also include the definition of ''lessor'' set forth in § 577.4 of this part. If the notification is being sent directly from a manufacturer to an individual or entity that the manufacturer knows to be a lessee, the manufacturer need not include a definition of lessor, but must state the requirement of Federal law regarding notification of lessees and that it is providing notification in place of the lessor.

(i) Any lessor who receives a notification of a determination of a safety-related defect or noncompliance pertaining to any leased motor vehicle shall send a copy of such notice to the lessee as prescribed by § 577.7(a)(2)(iv). This requirement applies to both initial and follow-up notifications, but does not apply where the manufacturer has notified a lessor's lessees directly.

28. Section 577.6 is amended by revising the heading of the section and paragraph (a), paragraphs (b)(2)(i) and (ii), (b)(3), and (b)(5), paragraphs (b)(9)(i)(A) and (C), and paragraphs (b)(10)(iv), (b)(11), and (c)(1), to read as follows:

§ 577.6 Notification pursuant to Administrator's decision.

(a) *Agency-ordered notification.* When a manufacturer is ordered pursuant to 49 U.S.C. 30118(b) to provide notification of a defect or noncompliance, he shall provide such notification in accordance with §§ 577.5 and 577.7, except that the statement required by paragraph (c) of § 577.5 shall indicate that the decision has been made by the Administrator of the National Highway Traffic Safety Administration.

(b) * * *

(2) * * *

(i) ''The Administrator of the National Highway Traffic Safety Administration has decided that a defect which relates to motor vehicle safety exists in (identified motor vehicles, in the case of notification sent by a manufacturer of motor vehicles; identified replacement equipment, in the case of notification sent by a manufacturer of replacement equipment);'' or

(ii) ''The Administrator of the National Highway Traffic Safety Administration has decided that (identified motor vehicles in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a manufacturer of replacement equipment) fail to conform to federal Motor Vehicle Safety Standard No. (number and title of standard).''

(3) When the Administrator decides that the defect or noncompliance may not exist in each such vehicle or item of replacement equipment, the manufacturer may include an additional statement to that effect.

* * * * *

(5) A clear description of the Administrator's stated basis for his decision, as provided in his order, including a brief summary of the evidence and reasoning that the Administrator relied upon in making his decision.

* * * * *

(9) * * *

(i) * * *

(A) A statement that the remedy will be provided without charge to the owner if the Court upholds the Administrator's decision;

* * * * *

(C) A statement that, if the Court upholds the Administrator's decision, he will reimburse the owner for any reasonable and necessary expenses that the owner incurs (not in excess of any amount specified by the Administrator) in repairing the defect or noncompliance following a date, specified by the manufacturer, which shall not be later than the date of the Administrator's order to issue this notification.

* * * * *

(10) * * *

* * * * *

(iv) The manufacturer's recommendations of service facilities where the owner could have the repairs performed, including (in the case of a manufacturer required to reimburse if the Administrator's decision is upheld in the court proceeding) at least one service facility for whose charges the owner will be fully reimbursed if the Administrator's decision is upheld.

(11) A statement that further notice will be mailed by the manufacturer to the owner if the Administrator's decision is upheld in the court proceeding.

* * * * *

(c) * * *

(1) The statement required by paragraph (c) of § 577.5 shall indicate that the decision has been made by the Administrator and that his decision has been upheld in a proceeding in the Federal courts; and

* * * * *

29. Section 577.7 is amended by adding a new sentence at the end of paragraph (a)(1), by adding a new last sentence to paragraph (a)(2)(i), and by adding new paragraph (a)(2)(iv), and revising paragraph (a)(2)(ii)(B), to read as follows:

§ 577.7 Time and manner of notification.

(a) * * *

(1) Be furnished within a reasonable time after the manufacturer first decides that either a defect that relates to motor vehicle safety or a noncompliance exists. The Administrator may order a manufacturer to send the notification to owners on a specific date where the Administrator finds, after consideration of available information and the views of the manufacturer, that such notification is in the public interest. The factors that the Administrator may consider include, but are not limited to, the severity of the safety risk; the likelihood of occurrence of the defect or noncompliance; whether there is something that an owner can do to reduce either the likelihood of occurrence of the defect or noncompliance or the severity of the consequences; whether there will be a delay in the availability of the remedy from the manufacturer; and the anticipated length of any such delay.

(2) * * *

(i) * * * The manufacturer shall also provide notification to each lessee of a leased motor vehicle that is covered by an agreement between the manufacturer and a lessor under which the manufacturer is to notify lessees directly of safety-related defects and noncompliances.

(ii) * * *

* * * * *

(B) (Except in the case of a tire) if decided by the Administrator to be required for motor vehicle safety, by public notice in such manner as the Administrator may require after consultation with the manufacturer.

* * * * *

(iv) In the case of a notification to be sent by a lessor to a lessee of a leased motor vehicle, by first-class mail to the most recent lessee known to the lessor. Such notification shall be mailed within ten days of the lessor's receipt of the notification from the vehicle manufacturer.

* * * * *

30. Section 577.8 is revised to read as follows:

§ 577.8 Disclaimers.

(a) A notification sent pursuant to §§ 577.5, 577.6, 577.9 or 577.10 regarding a defect which relates to motor vehicle safety shall not, except as specifically provided in this part, contain any statement or implication that there is no defect, that the defect does not relate to motor vehicle safety, or that the defect is not present in the owner's or lessee's vehicle or item of replacement equipment. This section also applies to any notification sent to a lessor or directly to a lessee by a manufacturer.

(b) A notification sent pursuant to §§ 577.5, 577.6, 577.9 or 577.10 regarding a noncompliance with an applicable motor vehicle safety standard shall not, except as specifically provided in this part, contain any statement or implication that there is not a noncompliance, or that the noncompliance is not present in the owner's or lessee's vehicle or item of replacement equipment. This section also applies to any notification sent to a lessor or directly to a lessee by a manufacturer.

31. A new § 577.10 is added to read as follows:

§ 577.10 Follow-up notification.

(a) If, based on quarterly reports submitted pursuant to § 573.6 of this part or other available information, the Administrator decides that a notification of a safety-related defect of a noncompliance with a Federal motor vehicle safety standard sent by a manufacturer has not resulted in an adequate number of vehicles or items of equipment being returned for remedy, the Administrator may direct the manufacturer to send a follow-up notification in accordance with this section. The scope, timing, form, and content of such follow-up notification will be established by the Administrator, in consultation with the manufacturer, to maximize the number of owners, purchasers, and lessees who will present their vehicles or items of equipment for remedy.

(b) The Administrator may consider the following factors in deciding whether or not to require a manufacturer to undertake a follow-up notification campaign:

(1) The percentage of covered vehicles or items of equipment that have been presented for the remedy;

(2) The amount of time that has elapsed since the prior notification(s);

(3) The likelihood that a follow-up notification will increase the number of vehicles or items of equipment receiving the remedy;

(4) The seriousness of the safety risk from the defect or noncompliance;

(5) Whether the prior notification(s) undertaken by the manufacturer complied with the requirements of the statute and regulations; and

(6) Such other factors as are consistent with the purpose of the statute.

(c) A manufacturer shall be required to provide a follow-up notification under this section only with respect to vehicles or items of equipment that have not been returned for remedy pursuant to the prior notification(s).

(d) Except where the Administrator determines otherwise, the follow-up notification shall be sent to the same categories of recipients that received the prior notification(s).

(e) A follow-up notification must include:

(1) A statement that identifies it as a follow-up to an earlier communication;

(2) A statement urging the recipient to present the vehicle or item of equipment for remedy; and

(3) Except as determined by the Administrator, the information required to be included in the initial notification.

(f) The manufacturer shall mark the outside of each envelope in which it sends a follow-up notification in a manner which meets the requirements of § 577.5(a) of this part.

(g) Notwithstanding any other provision of this Part, the Administrator may authorize the use of other media besides first-class mail for a follow-up notification.

Issued on: March 24, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–8130 Filed 4–4–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 950118017–5081–02; I.D. 122994A]

RIN 0648–AH82

Atlantic Sea Scallop Fishery; Framework Adjustment 4; Temporary Reduction in Crew Size Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 4 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This framework adjustment temporarily adjusts the maximum crew limit on certain vessels participating in the scallop fishery from nine to seven through February 29, 1996.

EFFECTIVE DATE: May 1, 1995.

ADDRESSES: Copies of Amendment 4, its regulatory impact review, the initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Framework Adjustment 4 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, NMFS, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

The final rule implementing Amendment 4 to the FMP was published on January 19, 1994 (59 FR 2757), with an effective date for most measures of March 1, 1994. The amendment retained the FMP's objectives to: (1) Restore adult stock abundance and age distribution; (2) increase yield per recruit for each stock; (3) evaluate plan research, development and enforcement costs; and (4) minimize adverse environmental impacts on sea scallops.

Amendment 4 changed the primary management strategy from a meat count (size) control to effort control. The amendment controls total fishing effort through limited access permits and a schedule of reductions in allowable days-at-sea. Supplemental measures include limits on increases in vessel fishing power to control the amount of fishing pressure and to help control the size of scallops landed, gear restrictions, and limits on the number of crew members. The amendment also includes a framework procedure for adjusting the management measures in the FMP. Initially, the maximum crew size was set at nine.

In response to very high levels of recruitment documented in the Mid-Atlantic resource area (Regional Director's Status Report, January 1994), the New England Fishery Management Council (Council) recommended lowering the maximum crew size limit from nine to seven until December 31, 1994. NMFS concurred and through Framework Adjustment 1, which was published on July 19, 1994 (59 FR